

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

07-CR-6080L

v.

GEOFFREY HULBURT,

Defendant.

This Court referred all pretrial motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Defendant Geoffrey Hulburt (“Hulburt”) charged in federal court with knowing possession of images of child pornography that had been transported via a computer.

Hulburt moved to suppress evidence obtained as the result of a search warrant issued by Chemung County Court Judge Thomas E. Ramich. Magistrate Judge Payson reviewed the motion, the materials submitted in support of the state court warrant and heard argument on the matters.¹

¹The oral argument before Magistrate Judge Payson was recorded and those recordings have been made available to this Court for review.

In the motion before Magistrate Judge Payson, Hulburt contended that there was no probable cause to issue the warrant for his computers and that the search exceeded the scope of the warrant actually issued. I have reviewed Magistrate Judge Payson's thorough Report and Recommendation (Dkt. # 26), and I agree with her conclusions and find no basis to modify or reverse her recommendation. I believe that the materials submitted to the issuing judge provided ample probable cause to obtain the warrant. Magistrate Judge Payson sets out all of the relevant facts and the pertinent materials submitted to the issuing judge and concludes, correctly I believe, that ample probable cause existed for issuance of the warrant.

Magistrate Judge Payson also denied the request for a so-called *Franks* hearing as unnecessary and unwarranted, and I concur. I also agree with Magistrate Judge Payson that under the principles of *United States v. Leon*, 468 U.S. 897 (1984), since the officers were entitled to rely on the warrant issued by the county court, the good-faith exception to the exclusionary rule also precludes suppression of evidence here.

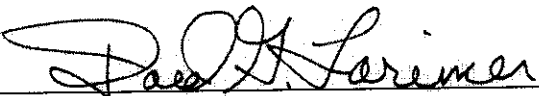
I also believe that Magistrate Judge Payson correctly determined that the officers executing the warrant did not exceed its scope. The warrant was certainly particular but sufficiently broad to allow the officers to seize the items at issue.

I have considered the objections filed by counsel for the defendant (Dkt. # 28). Those objections are not dissimilar to the arguments made originally before Magistrate Judge Payson, and I see no basis, based on those arguments, to reverse or modify Magistrate Judge Payson's Report and Recommendation.

CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson in all respects. Defendant Geoffrey Hulburt's motion to suppress evidence (Dkt. # 19) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 12, 2007.